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DIVISION OF PUBLIC AND BEHAVIORAL HEALTH**
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NOTICE OF PUBLIC HEARING

Intent to Adopt Regulations
(LCB File No. R004-14)

NOTICE IS HEREBY GIVEN that the State Board of Health will hold a public hearing to consider amendments to Chapter 453A of Nevada Administrative Code (NAC). This public hearing is to be held in conjunction with the State Board of Health meeting on March 14, 2014. The NAC 453A regulation changes will be heard in the order placed on the State Board of Health agenda.

The State Board of Health will be conducted via videoconference beginning at 9:00 a.m. on Friday, March 14, 2014, at the following locations:

Division of Public and Behavioral Health 4150 Technology Way Room 303 Carson City, NV 89706	BEIS 3811 W. Charleston Blvd., #112 Las Vegas, NV	Division of Aging and Disability Services Early Intervention Services 1020 Ruby Vista Drive, Suite 102 Elko, NV
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These proposed amendments are needed to comply with the provisions of Senate Bill 374 (2013), recently codified in Nevada Revised Statutes (NRS) 453A requiring the Division to develop regulations for the establishment, licensing, operation and regulation of medical marijuana establishments (MMEs) in the State of Nevada. The proposed regulations address this new industry as a privileged industry as outlined in NRS 453A.320 and provide processes for accepting/renewing applications, awarding MME certificates and agent cards, and establish

requirements for regulatory compliance for the cultivation, production, testing, and sale of marijuana for medicinal purposes.

In addition, the proposed regulations provide for cleanup of current NAC provisions relating to registry identification card holders.

1. Anticipated effects on the business which NAC 453A regulates:

- A. Adverse effects: There were concerns expressed by stakeholders related to costs outlined in SB 374, including the \$250,000 requirement. The Division does not have the authority to change these provisions; however, the Legislature has created the Subcommittee on the Medical Use of Marijuana of the Advisory Commission on the Administration of Justice. The Subcommittee is tasked with considering, evaluating, reviewing and reporting on the medical use of marijuana, the dispensation of marijuana for medical use and laws providing for the dispensation of marijuana for medical use.

The Division has followed the standards provided for fees as outlined in NRS 453A.344.

- Fees for application and renewal of medical marijuana certificates and establishment agent cards can be found Subsection 1.
 - Subsections 2(a) provides for the one-time, nonrefundable application fee of \$5,000.00.
- B. Beneficial: The regulations will provide the required structure and oversight of this new privileged industry. The regulations provide clear guidelines and include requirements for security and tracking of product from seed to sale. This will aid the industry in establishing integrity and aid the Division in preventing diversion of product.
- C. Immediate: The regulations will allow for the application, approval and creation of medical marijuana establishments to meet the needs of Nevada's medical marijuana card holders. The regulations will provide for the creation of new businesses and jobs in our state.
- D. Long-term: Provide integrity to the industry and provide public safety by ensuring Nevada's card holders have a safe place to go for their medication.

2. Anticipated effects on the public:

- A. Adverse: None anticipated.
- B. Beneficial: Increased public safety by controlling the product from seed to sale. All products must be tested by independent medical marijuana testing laboratories that are certified by the Division. Patients will know what is in the product they are purchasing. If any excess revenue remains from fees after paying the actual costs incurred by the Division in processing the application, including, without limitation, conducting background checks, it must be paid over to the State Treasurer to be

deposited to the credit of the State Distributive School Account in the State General Fund.

C. Immediate: Increased public safety.

D. Long-term: Increased public safety, please refer to 2B above.

3. **The estimated cost** to the Division of Public and Behavioral Health for inspections and audits required to enforce the regulations with onsite reviews is estimated to be \$3,449.00 per facility, annually. Administrative costs to support program operations and offsite regulation enforcement are anticipated to have an annual cost of \$2,701.00 per facility, using a baseline estimate of 150 approved facilities. Both components demonstrate an estimated total recurring annual cost of \$6,150.00 per facility. No general fund dollars will be used.

NRS 453A.344 provides for the Division to recover the costs that relate to the application process and for enforcement and oversight of the regulations.

2. In addition to the fees described in subsection 1, each applicant for a medical marijuana establishment registration certificate must pay to the Division:

(a) A one-time, nonrefundable application fee of \$5,000; and

(b) The actual costs incurred by the Division in processing the application, including, without limitation, conducting background checks.

3. Any revenue generated from the fees imposed pursuant to this section:

(a) Must be expended first to pay the costs of the Division in carrying out the provisions of [NRS 453A.320](#) to [453A.370](#), inclusive; and

(b) If any excess revenue remains after paying the costs described in paragraph such excess revenue must be paid to the State Treasurer to be deposited in the State Distributive School Account in the State General Fund.

4. **Small Business Impact Questionnaires** were prepared and on November 22, 2013, the questionnaire was sent with a copy of the proposed regulations to all members of the Division's Medical Marijuana LISTSERV, which contained 559 recipients, the Department of Taxation's list of 322 interested persons, 339 members of the Retail Association of Nevada, the 23 members of the Nevada League of Cities and the 17 members Nevada Association of Counties (NACO). In addition, on November 25, 2013 the Division sent the questionnaire and proposed regulations with a request to distribute through their memberships to the Asian Chamber of Commerce, Boulder City Chamber of Commerce (sent to 620 members), Carson Valley Chamber of Commerce, Economic Development Authority of Western Nevada (EDAWN), Las Vegas Chamber of Commerce, Las Vegas Global Economic Alliance, Las Vegas Metro Chamber of Commerce, Latin Chamber of Commerce, Laughlin Chamber of Commerce, Mesquite Chamber of Commerce, Mesquite Regional Business, Inc., Nevada Association of Minority Contractors, Nevada Minority Business Development Agency, Nevada Minority Supplier Development Council, Nevada SBDC Business Success Center, Nevada Small Business Development Center (SBDC), Pahrump Chamber of Commerce, Reno Live and Buy Local, Small Business Association in Reno and Las Vegas, University of Nevada – Business Start Up Center, Urban Chamber of Commerce, Ward 5 Chamber of Commerce, Women's Chamber of Commerce of

Nevada, and Nevada Workforce Connections. Six responses were received out of 1880 Questionnaires that were distributed.

The Division has determined there is no significant impact on small businesses related to the proposed regulations. The provisions of NRS 453A outline that this new industry is a privileged industry and requires significant regulation and oversight. The Division reached its conclusions as provided in the Small Business Impact Statement based on the information available from the cited sources as noted in the statement, such as NRS 453A, SB374 and the feedback received from interested parties, including the responses to the Small Business Impact Questionnaire. Based upon the range of amounts received from the response to the Small Business Impact Questionnaires it appears fees related to audits are variable and based on the size of the business, thereby not placing an undue burden on small businesses. Concerns raised over the proof of \$250,000 in assets requirement and the nonrefundable \$5,000 application fee requirement are provisions set in NRS 453A and the Division does not have the authority to change these provisions. However, the Division has directed individuals with these concerns to the Legislative Subcommittee on the Medical Use of Marijuana of the Advisory Commission on the Administration of Justice, where they can apply to serve or make their recommendations known. The Subcommittee will recommend changes in the legislation to the 2015 Nevada Legislature.

The comments received from the Small Business Impact Questionnaire were taken into consideration with extensive comments received from a Public Workshop that was held on December 23, 2013 and more than 70 changes were made to the proposed regulations which were then turned over to the Legislative Counsel Bureau on January 13, 2014.

The proposed regulations do not overlap or duplicate any other Nevada state regulations.

Members of the public may make oral comments at this meeting. Persons wishing to submit written testimony or documentary evidence in excess of two typed, 8 1/2" x 11" pages must submit the material to the Board's Secretary, Richard Whitley, to be received no later than March 3, 2014, at the following address:

Secretary, State Board of Health
Division of Public and Behavioral Health
4150 Technology Way, Suite 300
Carson City, NV 89706

Written comments, testimony, or documentary evidence in excess of two typed pages will not be accepted at the time of the hearing. The purpose of this requirement is to allow Board members adequate time to review the documents.

A copy of the notice and proposed regulations are on file for inspection and may be copied at the following locations during normal business hours:

Nevada Division of Public and Behavioral Health
4150 Technology Way, 2nd floor
Carson City, NV 89706

Nevada State Library
100 Stewart Street
Carson City, NV 89701

Nevada Division of Public and Behavioral Health
4220 S. Maryland Parkway, Suite 810, Building D
Las Vegas, NV 89119

A copy of the regulations as revised by the Legislative Counsel Bureau and the Small Business Impact Statement can be found on-line by going to: <http://health.nv.gov/medicalmarijuana.htm>. Copies may be obtained in person, by mail, or by calling Joe Theile, Management Analyst II at the Division of Public and Behavioral Health at (775) 684-3487, 4150 Technology Way, Second Floor, Carson City, Nevada 89706.

Copies of the proposed regulations as revised by the Legislative Counsel Bureau may also be obtained from any of the public libraries listed below:

Carson City Library
900 North Roop Street
Carson City, NV 89702

Churchill County Library
553 South Main Street
Fallon, NV 89406

Clark County District Library
1401 East Flamingo Road
Las Vegas, NV 89119

Douglas County Library
1625 Library Lane
Minden, NV 89423

Elko County Library
720 Court Street
Elko, NV 89801

Esmeralda County Library
Corners of Crook and 4th Street
Goldfield, NV 89013-0484

Eureka Branch Library
80 South Monroe Street
Eureka, NV 89316-0283

Henderson District Public Library
280 South Green Valley Parkway
Henderson, NV 89012

Humboldt County Library
85 East 5th Street
Winnemucca, NV 89445-3095

Lander County Library
625 South Broad Street
Battle Mountain, NV 89820-0141

Lincoln County Library
93 Maine Street
Pioche, NV 89043-0330

Lyon County Library
20 Nevin Way
Yerington, NV 89447-2399

Mineral County Library
110 1st Street
Hawthorne, NV 89415-1390

Pahrump Library District
701 East Street
Pahrump, NV 89041-0578

Pershing County Library
1125 Central Avenue
Lovelock, NV 89419-0781

Storey County Library
95 South R Street
Virginia City, NV 89440-0014

Tonopah Public Library
167 Central Street
Tonopah, NV 89049-0449

Washoe County Library
301 South Center Street
Reno, NV 89505-2151

White Pine County Library
950 Campton Street
Ely, NV 89301-1965

Per NRS 233B.064(2), upon adoption of any regulation, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.